

A Critical Tiriti Analysis of the recruitment and performance review processes of public sector chief executives in Aotearoa

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In 2018, Māori made up 16% of the overall public service workforce – a near match to their population profile (which sat at 15%). However, Māori remain under-represented within senior leadership roles across the New Zealand public sector. Research by Came et al.¹ generated through official information requests found in 2001 that only 2.3% of Māori earned over \$100,000 (as a proxy for seniority) and that this increased to 7.2% by 2016. Section 75¹ of the *Public Services Act 2020* states that “chief executives and boards to promote diversity and inclusiveness ... should reflect the makeup of society”. The State Services Commission² has conceded that Māori remain under-represented in the top three tiers of public service management and that this is a “key challenge”.

New Zealand is a signatory to a multiplicity of human rights declarations and conventions that outline the standards of conduct of government. The Convention on the Elimination of All Forms of Racial Discrimination (CERD)³ most relevant to this paper requires state parties to pursue the end of racism through all appropriate means and without delay. That said, in an environment free of racial discrimination, we would expect to see Māori making up at least 15% of chief executives across the public service. The Declaration of the Rights of Indigenous Peoples⁴ is another significant instrument, and failure to take action in relation to these two conventions leaves the country precariously exposed to international censure.

Abstract

Objective: Breaches of Te Tiriti o Waitangi (Te Tiriti) and evidence of institutional racism have been consistently documented within the public sector for decades. Chief executives across the sector have a critical responsibility to lead the implementation of the Crown’s Te Tiriti o Waitangi responsibilities. This paper examines the recruitment and performance review processes of public sector chief executives from 2000 to 2020 to ascertain Te Tiriti compliance.

Methods: Recruitment and performance review templates were obtained via official information requests to Te Kawa Mataaho Public Service Commission. The data were analysed using a five-stage Critical Tiriti Analysis to determine compliance based on indicators developed around the five elements of Te Tiriti.

Results: Our study found no explicit evidence of engagement with te Tiriti in any aspect of the recruitment and or performance review processes in the documents released.

Conclusions: This appears to be another contemporary breach of Te Tiriti that urgently needs to be addressed prior to the new round of appointments in the health sector.

Implications for public health: With significant senior appointments about to be made within the health sector, this paper is a timely contribution to the wider debate about the implications of the WAI 2575 Waitangi Tribunal report on the health sector.

Key words: chief executive officers, Te Tiriti o Waitangi, performance reviews, recruitment, Māori health

Further, it is a requirement of Crown agencies to fulfil their Te Tiriti o Waitangi responsibilities.⁵ Berghan et al.⁶ have argued that to substantially engage with Te Tiriti requires having intentional relationships with hapū and governance processes, actions and decision making informed and shaped by Māori. It requires a commitment to Māori-led processes, actions and decision making to share resources and power. There needs to be a planned process to ensure equitable outcomes for Māori and a commitment to Māori values and wairuatanga (spirituality).

A plethora of Waitangi Tribunal reports, most recently about the health sector,⁷ have shown the consistent failure of Crown agencies to fulfil these Te Tiriti responsibilities. New advice to the public sector via Cabinet circular⁵ outlines new expectations for policy analysts in relation to the Treaty of Waitangi and Te Tiriti o Waitangi. O’Sullivan et al.⁸ have undertaken a critical review of a new circular posing critical questions that could strengthen compliance beyond the low bar set by the Cabinet circular.

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The appointment of a chief executive within the public service is an important strategic decision with the potential for far-reaching impact. It sends a clear signal about what skills and expertise are important. This research examines the chief executive appointment and the performance review processes across the public service utilised by Te Kawa Mataaho Public Service Commission (formerly the State Services Commission) to determine whether these processes are Te Tiriti compliant.

Method

As Māori and Pākehā critical scholars, the authors engage in this Critical Tiriti Analysis of the recruitment and performance review processes in the pursuit of strengthening Te Tiriti compliance. We appreciate this critique is a desk-top review that does not necessarily capture the complexities of the good intentions of those involved.

The data for this paper was secured via *Official Information Act* (OIA) requests that were issued to the Public Service Commission in December 2020 covering data from the period 2000 to 2020.

The information sought pertained to appointment processes:

- How many chief executives have been appointed in this period and how many had Māori ancestry?
- Per appointment – how many people were on the appointment panel and how many of those people had Māori ancestry?
- Per appointment – can you release your appointment templates and weighting matrix?
- and performance reviews:
- How many chief executive performance reviews have been completed?
- Per performance review – how many people were on the review panel and how many of those people had Māori ancestry?
- Per performance review – can you release your review templates?

Data were analysed using a five-stage Critical Tiriti Analysis (CTA).⁹ The first stage was an overall orientation to the documents to ascertain how they engage with Te Tiriti and te Ao Māori (the Māori world). The second stage involved a close reading of the text reviewing it against the five elements of Te Tiriti: the preamble, the three articles and the fourth oral article.⁹ A determination was then

made against a set of indicators using a Likert scale ranging from 'absent' to 'excellent'. The fourth stage involved offering suggestions of how to strengthen the work and the critical final stage involved a Māori final word or overall assessment of Te Tiriti compliance.

Ethical approval was not sought for this study because it used publicly available data without identifying individuals.

Results

The findings are presented in two parts. The first part is a summary of the documents released under the OIA. Then stages one and two of the CTA are presented, with stages three and four presented in the discussion and the final stage presented in the conclusion.

Official information data

Chief executive appointment

Between 2000 and 2020, some 121 public service chief executives were appointed by Te Kawa Mataaho (Personal correspondence, 18 December 2020). Of those, it identified that seven chief executives self-reported Māori ethnicity. This equates to 5.7% of the appointments. Te Kawa Mataaho noted there were some inconsistencies in ethnicity data collection over the period but quality improvement initiatives had led to the recent adoption of a new ethnicity data collection standard endorsed by Statistics New Zealand.

Chief executive appointment panels

From the documentation provided, the Public Service Commissioner (the Commissioner) or their Deputy is the chairperson of the panel. The remainder of the panel is made up of another member of Te Kawa Mataaho and one or more other people appointed after consultation with appropriate Ministers. Panellists are independent advisors (who do not represent organisations or special interest groups) who are invited to assist the Commission to provide a community perspective and/or have expertise in a particular field and/or are chief executives. Every effort is made to avoid panellists with a bias for or against a candidate. The panel is involved in interviewing pre-short-listed candidates.

As part of that process, panellists get access to applicants' formal applications and referee details to enable knowledge of as full a background as possible. This includes a

capability self-assessment where candidates provide examples including detailing projects or occasions when they have demonstrated nominated capabilities such as leading strategically, enhancing system and organisational performance, leading with influence, and achieving ambitious goals. Applicants also undertake a Leadership Insight process.

The panellists must consider the candidates and deliberate with the Commissioner on the person to be recommended. The Commissioner decides on the recommendation that goes to the Minister for the Public Service, then to Cabinet and the Governor-General in Council who conveys the decision to the Commissioner for enactment.

From the OIA, six of the appointments had no panel as they were transfers. Information was not available for the appointment of six candidates and the remaining 109 appointments had between five and seven panellists of unknown ethnicity. Te Kawa Mataaho noted they did not collect ethnicity data from appointment panels so therefore refused this part of the OIA request.

Recruitment matrices

Te Kawa Mataaho shared several standard documents, dated 2019, that government agencies modified for individual agency appointments. These base documents indicated that chief executives are required to do an eight-minute presentation on a customised topic for the role. Interview questions are outlined in Table 1.

Through the OIA process, Te Kawa Mataaho confirmed they did not use weighted matrices for things such as cultural competencies for appointments and were not aware of this approach being taken historically within their agency.

Chief executive performance reviews

Te Kawa Mataaho noted that the Commissioner and/or their Deputy hold annual performance reviews with chief executives. A review panel is not involved.

Performance review templates

Through the OIA process, Te Kawa Mataaho confirmed their current performance review process. Chief executives write up a reflection on the past calendar year with a focus on results and services to deliver government priorities, collaboration for system outcomes, learning and future improvement. Each write-

up is specific to a chief executive. The review template includes the name of the chief executive, the agency they lead and a section for highlights, another for commentary and place for both parties to sign-off and date the review.

Critical Tiriti Analysis: Stage one – Orientation

The modern New Zealand public service was established in 1912 under the *Public Service Act* with the intention of ensuring merit-based, non-political appointments to civil service jobs.¹⁰ However, it rested on a 70-year record of diverse public servants (paid by the Crown) who carried the bureaucratic functions upon which colonial practice was founded and expanded to control the country.

Henry Kemp, the 22-year-old who translated the Treaty of Waitangi in 1840, has been identified as the first New Zealand-born ‘civil servant’.¹⁰ It is important to note this first ‘civil’ activity as defined by Te Kawa Mataaho for two main reasons: it is the genesis of the modern New Zealand public service; and it identifies the inseparable relationship between Te Kawa Mataaho and Te Tiriti o Waitangi.

Te Kawa Mataaho has always been on the front line implementing politically neutral colonial policies such as territorial invasions, unilateral land acquisitions, land confiscations, forced assimilation of Maori and the establishment of colonial institutions.¹¹ As such, they have been involved in enabling institutional racism through action and omission as outlined in reports such as Puao-te-ata-tu¹² and a plethora of Waitangi Tribunal reports.

Since its inception, Te Kawa Mataaho has been headed by Commissioners but was unable to confirm if any of these leaders had Māori ancestry.

None of the documents provided by Te Kawa Mataaho through the OIA process mentioned Te Tiriti o Waitangi or made any reference to te Ao Māori. However, the *Public Service Act 2020* in Section 14¹ reinforces that the requirement of the public service “includes supporting the Crown in its relationships with Māori under the Treaty of Waitangi (Te Tiriti o Waitangi)”.

Stage two – Close reading

Preamble, kāwanatanga, tino rangatiratanga, ōritetanga, wairuatanga
Māori were not mentioned as Te Tiriti partners

or in any capacity in any of the documents released. It appears there is no requirement for Māori involvement of any kind in any step of the recruitment or review process. The documentation did not mention Te Tiriti o Waitangi, Treaty of Waitangi nor even Treaty principles. The five elements of Te Tiriti were likewise absent. There was no mention of te reo me ōna tikanga (Māori language and cultural protocols) or cultural competency being a key attribute of a chief executive. There was no mention of applicants needing to evidence bicultural practice, relationships with hapū, iwi, Te Puni Kōkiri and/or Māori communities. There were no statements about Equal Employment Opportunity programmes and/or diversity.

Discussion

Stage three – Determination

As clearly outlined above, there was nothing in the documentation released by Te Kawa Mataaho pertaining to either appointment processes or performance review processes requiring engagement with Te Tiriti o Waitangi and/or te Ao Māori. Tables 2 and 3 show our determination of Te Tiriti compliance. Individual Crown agencies may be asking localised questions pertaining to Te Tiriti and/or engagement with Māori, but there appears to be no mandatory minimum requirement across these processes.

Stage four – Strengthening practice

The new *Public Service Act 2020* explicitly codifies that the public service and its

Table 1: Chief Executive interview questions.

Interview questions	
1.	Can you do this job? Tell about what has prepared you for this leadership role. Why do you want this job? What skills do you bring?
2–5.	[Questions customised to each role]
6.	Integrity and conduct Is there anything that you need to disclose about your integrity, conduct or behaviour, either past or present, that could bring you or the [Agency] into disrepute? Is there anything that we have not asked today that you should disclose? If yes, please explain.

leaders are responsible for engaging with Māori, understanding Māori perspectives, recognising Māori aspirations and increasing Māori involvement in the public service.

The current appointment and performance review processes have silenced Te Tiriti o Waitangi at the very heart of Crown bureaucracy. The documents released under the OIA do not align to the new expectations of the *Public Service Act 2020*. The authors recommend the transformation of the existing system to enable Māori governance over chief executive appointments and review processes. Furthermore, the authors recommend an interim delegation of authority from the Commissioner to external Māori experts to develop a Te Tiriti compliant appointment process prior to the new senior appointments within the health sector. This process should explicitly include Māori governance, Māori inclusion at all stages of the appointment process, normalisation of

Table 2: Critical Tiriti Analysis of appointment processes against indicators.

	Silent	Poor	Fair	Good	Excellent
Māori are lead or equal partners	×				
Equitable Māori participation and leadership	×				
Evidence of inclusion of Māori epistemology approaches and authority	×				
Māori exercising their equitable citizenship	×				
Acknowledge of wairuatanga and tikanga	×				
<i>Note:</i> <i>Adapted from reference 9.</i>					

Table 3: Critical Tiriti Analysis of performance review processes against indicators.

	Silent	Poor	Fair	Good	Excellent
Māori are lead or equal partners	×				
Equitable Māori participation and leadership	×				
Evidence of inclusion of Māori epistemology approaches and authority	×				
Māori exercising their equitable citizenship	×				
Acknowledge of wairuatanga and tikanga	×				
<i>Note:</i> <i>Adapted from reference 9.</i>					

tikanga and wairua and ongoing Māori-led evaluation.

Te Kawa Mataaho celebrates its high international and national rankings in the Corruption Perceptions Index, The International Civil Service Effectiveness (InCiSE) Index, the Colmar Brunton Public Sector Reputation Survey and the Kiwis Count Survey (Te Kawa Mataaho, 2020). These comprehensive assessments report on civil service effectiveness, with a focus on trust and integrity. What is structurally silenced in this list are the voices of national and international Indigenous views of trust, integrity and civil duty. For example, there is no mention of Te Tiriti o Waitangi compliance or a tikanga Māori monitoring framework, nor the aforementioned CERD³ and UN Declaration on the Rights of Indigenous Peoples.⁴ The authors recommend Te Kawa Mataaho urgently resource external Māori expertise to develop, implement and monitor a Te Tiriti assessment tool.

Puketapu¹³ and Gregory and Maynard¹⁴ have both written about the transformative potential of embracing wairuatanga and tikanga within the public service. They maintain that inclusion of wairua improves connections and relationships – so people feel seen, heard and valued. They propose an authentic wairua orientation to the public service so human connection and the valuing of relationships sit alongside technical expertise. This transformation requires leaders with courage, trust and willingness to enter into uncertainty. We support this recommendation and that wairuatanga should be embedded into all facets of Te Kawa Mataaho.

Conclusion

Stage five – Māori final word

Mā te Māori ngā kupu mutunga. Māori have absolute rangatiratanga (unfettered authority) to monitor and critique the actions of the Crown. With the imminent appointment of new chief executives for Health New Zealand, the Public Health Agency and the Māori Health Authority, independent external review is critical.

Te Kawa Mataaho wields extraordinary power. It is problematic that Te Kawa Mataaho monitors the public sectors' alignment to Te Tiriti o Waitangi, workforce diversity and engagement with Māori, and yet it fails to implement Te Tiriti in its own processes when

appointing and managing chief executives.

Te Kawa Mataaho (a leader who monitors our leaders) is a name of great mana, however, when you carry a Māori name, your primary purpose is to bring forth the vision of that name. The intention and meaning of Te Kawa Mataaho should be embedded into the architecture of the organisation so much so that its mauri (life force) is visible in every structure, system and process. Te Kawa Mataaho isn't yet breathing the kawa of mataaho; it is yet to align to its own purpose. As such, it is further perpetuating the colonisation and commodification of te reo Māori, and again Aotearoa nui tonu.

Overall, this paper raises important questions about the organisational competency of Te Kawa Mataaho to appoint and monitor chief executives and has the potential for far-reaching impact. The current appointment process is not Te Tiriti compliant and any further appointments should be stopped until it is.

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